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PUBLIC NOTICE:

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony

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**AGENDA FOR THE
REGULAR COUNCIL MEETING OF
MONDAY, JANUARY 13, 2003 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS - 12TH FLOOR
202 "C" STREET
SAN DIEGO, CA 92101**

ITEM-1: ROLL CALL.

ITEM-10: INVOCATION.

ITEM-20: PLEDGE OF ALLEGIANCE.

NON-AGENDA PUBLIC COMMENT

Non-agenda public comment is taken on Tuesday pursuant to Ordinance O-18939 adopted on September 24, 2001.

REQUESTS FOR CONTINUANCE

The Council will now consider requests to continue specific items.

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CONSENT ITEMS

The following listed items are considered to be routine, and the appropriate Environmental Impact Reports have been considered. These items are indicated on the docket by a preceding asterisk (*).

ORDINANCES TO BE INTRODUCED:

Item 50.

RESOLUTIONS TO BE ADOPTED:

Items 100, 101, and 102.

ADOPTION AGENDA, CONSENT ITEMS

ORDINANCE TO BE INTRODUCED:

* ITEM-50: Request to Exempt a Position from Classified Service to Unclassified Service.

(See memorandum from Richard Hays dated 8/21/2002.)

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2003-101)

Introduction of an Ordinance exempting the position of Assistant Deputy Director from the classified service and declaring the position to be in the unclassified service of the City of San Diego pursuant to Section 117(a)17 of the City Charter.

CITY MANAGER SUPPORTING INFORMATION:

On October 3, 2002, the Civil Service Commission reviewed a request of the Environmental Services Department Director to exempt an Assistant Deputy Director position from the Classified Service. This position will be responsible for assisting the Environmental Programs Division Deputy Director and will have the full range of managerial responsibility for an essential citywide program required by State law.

The complex and diverse program components must be closely coordinated and new policies and programs must be developed and implemented within a three year timeframe for the City to be in full compliance with State recycling and waste diversion mandates. Program components include Waste Diversion (achieving and maintaining 50% waste diversion as required by the State), Diversion of Universal Waste (developing and implementing programs to manage wastes previously considered “benign,” such as computer monitors and television screens) and Storm Water and Litter (implementing and managing a broad and effective anti-litter campaign, as well as reviewing solid waste code regulations to ensure compliance with the City’s Storm Water Permit).

This position will be tasked with the highest levels of program development, management and implementation and will work in partnership with a Division Head to interface with top officials of federal, state, business and community organizations. Policy recommendations and City programs resulting from these efforts will result in far-reaching changes that will impact the current and future quality of life for San Diego residents.

Charter Section 117 states that the Unclassified Service shall include “managerial employees having significant responsibilities for formulating and administering policies and programs. Each position shall be exempt from the Classified Service by ordinance, upon the initiation of the appropriate appointing authority and after receiving the advisory review and comment of the Civil Service Commission and approval of the City Council.”

Upon review of the duties and responsibilities of this position, the Commission found that it meets the intent of Charter Section 117 and, therefore, the request is being forwarded to the City Council with a recommendation for approval.

Loveland/Hays/LB

ADOPTION AGENDA, CONSENT ITEMS RESOLUTIONS:

- * ITEM-100: Inviting Bids and Award of Contract for the Construction of Sewer Pump Station 50 Improvements and Low Flow Diversion Project.

(See memorandum from Frank Belock, Jr. dated 11/5/2002. Mission Bay Park Community Area. District-2.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2003-504)

Approving the plans and specifications for the furnishing of all labor, material, tools, equipment, transportation and other expense necessary or incidental and inviting bids for the Construction of Sewer Pump Station 50 Improvements and Low Flow Diversion Project on Work Order No. 176381;

Authorizing the City Manager to execute a contract with the lowest responsible bidder for the Project in an amount not to exceed \$2,586,597, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for the expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$2,586,597 from Sewer Fund 41506, CIP-46-106.0, Sewer Pump Station Restorations, contingent upon passage of the FY 2004 and FY 2005 Capital Improvement Program and Appropriation Ordinance Budgets, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for the expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K03437C)

Subitem-B: (R-2003-505)

Certifying that the information contained in Mitigated Negative Declaration LDR-42-0314 has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and State guidelines, and that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of Sewer Pump Station 50 Improvements and Low Flow Diversion Project;

Approving LDR-42-0314 and adopting the Mitigation Monitoring and Reporting Program;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 11/13/2002, NR&C voted 5 to 0 to approve. (Councilmembers Peters, Wear, Frye, Madaffer and Inzunza voted yea.)

CITY MANAGER SUPPORTING INFORMATION:

Sewer Pump Station 50 is located at 3001 Ingraham Street on Vacation Island in Mission Bay Park. The existing pump station was constructed in 1961 and has exceeded its service life. The project's goal is to restore and improve the reliability of the pump station and bring it up to current standards and regulations.

The scope of work consists of rehabilitation of the existing pump station, construction of a storm drain diversion structure to the emergency storage tank, replacement of the existing force main and the installation of a new secondary force main of approximately 1,722 feet long. During the

construction phase of the project, the contractor will be working between 8:30 a.m. and 3:30 p.m., Monday through Friday.

The project has been presented to the community. In addition, nearby residents will be notified by mail at least one (1) month before construction begins by the City's Engineering and Capital Projects Department and again ten (10) days before construction begins by the contractor through hand distribution. It is anticipated that construction activities will not impact access to the bay. The staging area will be fenced and secured at all times and the trench will be covered with steel plates nightly. Traffic plans have been prepared for this project and will be implemented during the construction operations.

FISCAL IMPACT:

The total cost of this project is \$2,908,597. Funds of \$2,586,597 are available in Sewer Fund 41506, CIP- 46-106.0, Sewer Pump Station Restorations, for this purpose. This project is scheduled to be phase funded over FY 2004 and FY 2005.

Loveland/Belock/HR

WWF-03-631.

**ADOPTION AGENDA, CONSENT ITEMS
RESOLUTIONS:**

* ITEM-101: Inviting Bid and Award of Contract for Sewer Pump Station 42 Improvements.

(See memorandum from Frank Belock, Jr. dated 11/5/2002. La Jolla Community Area. District-1.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2003-506)

Approving the plans and specifications for the furnishing of all labor, material, tools, equipment, transportation and other expense necessary or incidental and inviting bids for the construction of Sewer Pump Station 42 Improvements (Project) on Work Order No. 176311;

Authorizing the City Manager to establish contract funding phases, to award a contract to, and to execute a contract with, the lowest responsible and reliable bidder for the Project in an amount not to exceed \$2,838,418;

Authorizing the expenditure of an amount not to exceed \$2,838,418 from Sewer Fund 41506, CIP-46-106.0, Annual Allocation - Sewer Pump Station Restorations, for the purpose of providing funds for the Project and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the

funds necessary for the expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$17,348 from CIP-46-106.0, Annual Allocation - Sewer Pump Station Restorations, for property related costs;

Declaring that the expenditures are contingent upon the passage of the FY04 Capital Improvement Program and Appropriation Ordinance Budgets;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.
(BID-K03434C)

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 11/13/2002, NR&C voted 5 to 0 to approve. (Councilmembers Peters, Wear, Frye, Madaffer and Inzunza voted yea.)

CITY MANAGER SUPPORTING INFORMATION:

Sewer Pump Station 42 is located at 5387 Calumet Avenue in the La Jolla community area. The goal of the project is to improve the reliability of the pump station and bring it up to current standards and regulations. This entails the demolition of part of the existing Sewer Pump Station 42, rehabilitation of the existing wet well, and construction of underground emergency storage tanks. It also includes expansion of the existing structure to house a back-up generator and electrical components, and the installation of two (2) six-inch (6") force mains of approximately 1,005 feet each.

During design the project manager and the project engineer presented the project to the community and immediate residents. In addition, nearby property owners, companies, and residents will be notified by mail at least one month before construction by the City's Engineering and Capital Projects Department and again 10 days before construction begins by the contractor through hand distribution.

To provide safety to local residents, the existing fence around the pump station will remain intact and the contractor will be required to provide traffic control plans for the project to the City's Traffic Signal Design and Traffic Control Section for approval and implementation. Working hours for the project will be between 8:30 a.m. and 3:30 p.m., Monday to Friday.

FISCAL IMPACT:

The total estimated cost of the project is \$3,073,318. Funds of \$2,838,418 are available in Sewer Fund 41506, CIP-46-106.0, Annual Allocation - Sewer Pump Station Restorations, for this purpose. This project is scheduled to be phase-funded within FY2004.

Loveland/Belock/HR

WWF-03-637.

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

- * ITEM-102: Vacation of a Slope and Flood Water Storage Easement in Lots 2 and 3 of Map 12421.

(Otay Mesa Community Area. District-8.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-824)

Vacating the slope and flood water storage easements in Lots 2 and 3 of Map 12421, to unencumber this property under the procedure for the summary vacation of public service easements, Section 8330 et seq. of the California Streets and Highways Code.

CITY MANAGER SUPPORTING INFORMATION:

City Council action is requested to vacate two easements, a slope and a flood water storage easement in Lots 2 and 3 of Map No. 12421. This property is located in the Otay Mesa Planning area within Council District 8. The applicant has granted the City another flood water storage easement to the City to replace the one being vacated making this easement unnecessary. Also Harvest Road has been constructed making the slope easement no longer necessary. No rights are granted to the public by these easements and the abandonment of these easements will relieve the City of the responsibility to maintain the easement areas. The Water and Transportation Development Services Department has reviewed the vacation request and recommends approval of the vacation. These easements were acquired at no cost to the City.

City staff recommends approval of the easement vacation.

FISCAL IMPACT:

None, all costs have been paid by the applicant.

Ewell/Broughton/AEA

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

RESOLUTIONS:

- ITEM-200: Amendment to the Revised Retainer Agreement for Outside Counsel.

(Continued from the meeting of 12/09/2002, Item 103, at the request of Councilmember Peters, to consider a briefing on the item in Closed Session before a vote is taken.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-736)

Authorizing the City Manager to execute an amendment to the revised retainer agreement dated November 20, 2000, with Bingham, McCutchen, LLP (formerly McCutchen, Doyle), for legal services in connection with Clean Water Act matters;

Authorizing the expenditure of an amount not to exceed \$350,000 from Fund No. 41509, Metro Wastewater Department Fiscal Year 2003 Operations and Maintenance Budget, Organization 445, Object Account 4151, Job Order 005040, to provide funds for the above amended agreement.

CITY MANAGER SUPPORTING INFORMATION:

Bingham, McCutchen (formerly McCutchen, Doyle) has provided outside counsel services to the Metropolitan Wastewater Department since 1992, and possesses specialized expertise in the City's 301 (h) waiver process and applications. Three new actions require additional service: (1) Baykeeper v. State Water Resources Control Board, ex rel City, Superior Court Case No. GIC 796141 challenges the mass emissions limit of the City's permit; (2) the City is preparing a protective appeal to the EPA Environmental Appeals Board to preserve the challenge to applicability of the Ocean Pollution Reduction Act (OPRA) to the City's 301 (h) present and future permits; (3) EPA intervention in Baykeeper v. City of San Diego, District Court Case No. 01-CV-0550-B (Sewer Spills Case).

EPA has informed the City that since the pending case seeks remedies for sewer spills and overlaps with EPA Administrative Order No. CWA-309-9-02-17, the Federal Government will intervene to protect its interests. Such action will complicate the existing action and require more legal review. Outside counsel assistance is needed to assist City staff in each of these matters.

Bingham McCutchen has been retained since 1992 and has successfully assisted the City in defending Clean Water Act actions, and processing Clean Water Act appeals.

This Amendment to Revised Retainer Agreement No. RR-294236 will increase funding by \$350,000 to assist City staff in the defense of the state board action, assist in the preparation of an appeal to the Environmental Appeals Board, and assist in the defense of Baykeeper v. City and EPA intervention.

FISCAL IMPACT:

Funds in the amount of \$350,000 are available in the MWWD FY 2003 Operations and Maintenance Budget, Fund 41509.

Mendes/Tulloch/WJH

Aud. Cert. 2300572.

**ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTIONS:**

ITEM-201: La Jolla Country Club Villas Drainage Vacation.

(La Jolla Community Area. District-1.)

(Continued from the meeting of 12/09/2002, Item S408, at the request of Councilmember Peters, for further review.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2003-754)

Vacating the drainage easement located east of Fay Avenue, on the northeast side of Muirlands Drive, to unencumber this property under the procedure for the summary vacation of public service easements, Section 8330 et seq. of the California Streets and Highways Code;

Authorizing the drainage easement rights to be sold to Centex Homes for \$232,300;

Authorizing the City Manager, or his designee, to execute a quitclaim deed to Centex Homes, for those drainage easement rights;

Declaring that no broker's commission shall be paid by the City on the negotiated sale.

CITY MANAGER SUPPORTING INFORMATION:

The vacation and sale to Centex Homes of the City's drainage easement at fair market value (\$232,300) satisfies Condition No. 24 of Country Club Villas, VTM No. 99-1268, Adopted December 14, 2000.

FISCAL IMPACT:

The amount of \$232,300 to be deposited into the Capital Outlay Fund No. 302453.

Herring/Griffith/RAG

**ADOPTION AGENDA, DISCUSSION, HEARINGS
SPECIAL HEARINGS:**

ITEM-202: In the Matter of the 1995 Agreement for the Partial Use and Occupancy of Qualcomm Stadium between the City of San Diego and the San Diego Chargers.

(Mission Valley Community Area. District-6.)

TODAY'S ACTION IS:

Discussion, consideration and possible action on the proposal by the San Diego Chargers to defer the period within which the team may send to the City a Renegotiation Notice from the period December 1, 2002 through January 29, 2003 to the period March 1, 2003 through April 29, 2003.

CITY MANAGER SUPPORTING INFORMATION:

Pursuant to the terms of the 1995 Agreement, at any time from December 1, 2002, through and including January 29, 2003, the Chargers may send the City a Renegotiation Notice. If the conditions which permit the notice to be sent are met, the notice begins a process by which the team and the City must first negotiate regarding the terms of the 1995 Agreement, but which may ultimately allow the team to seek a new venue outside San Diego and terminate the 1995 Agreement.

On December 16, 2002, on behalf of the Chargers, Mark Fabiani issued a statement proposing that the period during which the team may send the Renegotiation Notice be deferred from the period December 1, 2002 through January 29, 2003 to the period from March 1, 2003 through April 29, 2003. This deferral would permit the Citizens Task Force on Chargers Issues to complete and deliver its report to the City Council prior to the time when the Chargers could send a Renegotiation Notice. On December 23, 2002, the Task Force, by a 14-1 vote, recommended that the City Council approve the proposal.

PUBLIC NOTICE:

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony.

ITEM-250: **Notice** of Pending Final Map Approval - Pacific Terrace.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled "Pacific Terrace," TM-40-0666, a copy of which is available for public viewing at the office of the San Diego City Clerk. Said project is located northeasterly of Third Avenue and "J" Street in the Centre City Community Plan Area in Council District 2. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed.

Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Deputy City Engineer Lee Hennes at (619) 446-5291.

NON-DOCKET ITEMS

ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES

ADJOURNMENT